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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1001

Introduced by Assembly Member Maienschein
(Coauthors: Assembly Members Baker, Calderon, Chávez, Cooley,
Gallagher, Grove, Hadley, and Olsen)
(Coauthors: Senators Anderson, Bates, Cannella, and Runner)

February 26, 2015

An act to amend Section 1558 of, and to add ~~Section~~ *Sections 1522.09 and 1556.5* to, the Health and Safety Code, *and* to amend Sections 11165.7 and 11166 of the Penal Code, ~~and to amend Section 10605.5 of the Welfare and Institutions Code~~, relating to child abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 1001, as amended, Maienschein. Child abuse: reporting: foster family agencies.

(1) The Child Abuse and Neglect Reporting Act requires a mandated reporter, as defined and including an administrator or employee of a public or private organization whose duties require direct contact and supervision of children, to make a report to a specified agency whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Under existing law, the failure to

make this report is a crime. Existing law also prohibits a supervisor or administrator from impeding or inhibiting the reporting duties, provides that a person making the report shall not be subject to any sanctions for making the report, and prohibits internal procedures to facilitate reporting from requiring any employee required to make reports to disclose his or her identity to the employer.

Existing law, the California Community Care Facilities Act (the act), governs the licensing and regulation of community care facilities, as defined, including foster family agencies for children. Existing law vests responsibility for administering and enforcing laws and regulations governing those facilities in the State Department of Social Services. Existing law authorizes the department to prohibit a person from being a member of the board of directors, an executive director, or an officer of a licensee, or a licensee from employing, or continuing the employment of, or allowing in a licensed facility or certified family home, or allowing contact with clients of a licensed facility or certified family home by, any employee, prospective employee, or person who is not a client who has committed various acts or has been denied an exemption to work or to be present in a facility or certified family home, as specified.

This bill would expand the definition of mandated ~~report~~ *reporter* to include a board member of a public or private organization whose duties require direct contact and supervision of children, including a foster family agency. By imposing the reporting requirements on a new class of persons, for whom failure to report specified conduct is a crime, this bill would impose a state-mandated local program. *The bill would also require the department to develop a notice regarding the reporting of complaints and would require the posting of that notice in all foster family agencies, as specified.* The bill would also require that if the department, as a condition of licensure, requires the chief executive officer or other authorized member of the board of directors and the administrator of a foster family agency to attend an orientation given by the licensing agency that outlines the applicable rules and regulations for operation of a foster family agency, then that orientation shall include a description of policies, procedures, or practices, that violate the provisions described above governing mandated reporters. The bill would also require the department to take reasonable action, including, among other things, prohibiting a person from being a member of the board of directors, upon a finding of a violation of the provisions described above governing mandated reporters.

~~(2) Existing law requires the department, in consultation with counties and labor organizations, to establish a process to receive voluntary disclosures from social workers, if a social worker has reasonable cause to believe that a policy, procedure, or practice, related to the provision of child welfare services by a county child welfare agency, meets any of specified conditions, including that the policy, procedure, or practice endangers the health or well-being of children or is contrary to an existing statute or regulation. Existing law requires the department to make available to counties and labor organizations a description of the process established, and, no later than January 1, 2018, to report to the Legislature the total number of relevant disclosures received from social workers and a summary description of both the issues raised in the disclosures received and the actions taken by the department in response to the disclosures, and to post the information on the department's Internet Web site.~~

~~This bill would, effective January 1, 2018, require the department to carry out the duties imposed pursuant to these provisions with respect to voluntary disclosures from social workers employed at a foster family agency, as defined, including, but not limited to, disclosures from social workers who have reasonable cause to believe that a policy, procedure, or practice violates the provisions governing mandated reporters described in paragraph (1). The bill would require the department to make a report regarding this information, similar to the report required pursuant to existing law, no later than July 1, 2019, and to post the information on its Internet Web site.~~

~~(3)~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1522.09 is added to the Health and Safety
- 2 Code, to read:
- 3 1522.09. (a) The department shall, no later than July 1, 2017,
- 4 develop a notice that does all of the following:

1 (1) Contains the telephone number to make a complaint
2 regarding a community care facility or child care facility.

3 (2) Includes information about the prohibition of impeding
4 mandated reports.

5 (3) Includes information about the option to make a confidential
6 complaint.

7 (b) The notice developed pursuant to subdivision (a) shall be
8 posted conspicuously in a prominent area in all foster family
9 agencies.

10 ~~SECTION 1.~~

11 ~~SEC. 2.~~ Section 1556.5 is added to the Health and Safety Code,
12 to read:

13 1556.5. (a) If the department, as a condition of licensure,
14 requires the chief executive officer or other authorized member of
15 the board of directors and the administrator of a foster family
16 agency to attend an orientation given by the licensing agency that
17 outlines the applicable rules and regulations for operation of a
18 foster family agency, that orientation shall include, but not be
19 limited to, a description of policies, procedures, or practices that
20 violate paragraph (1) or (2) of subdivision (i) of Section 11166 of
21 the Penal Code.

22 (b) If the department requires, as part of an application for
23 licensure for a foster family agency, a written plan of operation,
24 that plan of operation shall include a written plan establishing
25 policies, procedures, or practices to ensure that the foster family
26 agency does not violate paragraph (1) or (2) of subdivision (i) of
27 Section 11166 of the Penal Code.

28 (c) For purposes of this section, a foster family agency is defined
29 in paragraph (4) of subdivision (a) of Section 1502.

30 ~~SEC. 2.~~

31 ~~SEC. 3.~~ Section 1558 of the Health and Safety Code is amended
32 to read:

33 1558. (a) The department may prohibit any person from being
34 a member of the board of directors, an executive director, or an
35 officer of a licensee, or a licensee from employing, or continuing
36 the employment of, or allowing in a licensed facility or certified
37 family home, or allowing contact with clients of a licensed facility
38 or certified family home by, any employee, prospective employee,
39 or person who is not a client who has:

1 (1) Violated, or aided or permitted the violation by any other
2 person of, any provisions of this chapter or of any rules or
3 regulations promulgated under this chapter.

4 (2) Engaged in conduct that is inimical to the health, morals,
5 welfare, or safety of either the people of this state or an individual
6 in or receiving services from the facility or certified family home.

7 (3) Been denied an exemption to work or to be present in a
8 facility or certified family home, when that person has been
9 convicted of a crime as defined in Section 1522.

10 (4) Engaged in any other conduct that would constitute a basis
11 for disciplining a licensee or certified family home.

12 (5) Engaged in acts of financial malfeasance concerning the
13 operation of a facility or certified family home, including, but not
14 limited to, improper use or embezzlement of client moneys and
15 property or fraudulent appropriation for personal gain of facility
16 moneys and property, or willful or negligent failure to provide
17 services.

18 (b) The excluded person, the facility or certified family home,
19 and the licensee shall be given written notice of the basis of the
20 department's action and of the excluded person's right to an appeal.
21 The notice shall be served either by personal service or by
22 registered mail. Within 15 days after the department serves the
23 notice, the excluded person may file with the department a written
24 appeal of the exclusion order. If the excluded person fails to file
25 a written appeal within the prescribed time, the department's action
26 shall be final.

27 (c) (1) The department may require the immediate removal of
28 a member of the board of directors, an executive director, or an
29 officer of a licensee or exclusion of an employee, prospective
30 employee, or person who is not a client from a facility or certified
31 family home pending a final decision of the matter, when, in the
32 opinion of the director, the action is necessary to protect residents
33 or clients from physical or mental abuse, abandonment, or any
34 other substantial threat to their health or safety.

35 (2) If the department requires the immediate removal of a
36 member of the board of directors, an executive director, or an
37 officer of a licensee or exclusion of an employee, prospective
38 employee, or person who is not a client from a facility or certified
39 family home, the department shall serve an order of immediate
40 exclusion upon the excluded person that shall notify the excluded

1 person of the basis of the department's action and of the excluded
2 person's right to a hearing.

3 (3) Within 15 days after the department serves an order of
4 immediate exclusion, the excluded person may file a written appeal
5 of the exclusion with the department. The department's action
6 shall be final if the excluded person does not appeal the exclusion
7 within the prescribed time. The department shall do the following
8 upon receipt of a written appeal:

9 (A) Within 30 days of receipt of the appeal, serve an accusation
10 upon the excluded person.

11 (B) Within 60 days of receipt of a notice of defense pursuant
12 to Section 11506 of the Government Code by the excluded person
13 to conduct a hearing on the accusation.

14 (4) An order of immediate exclusion of the excluded person
15 from the facility or certified family home shall remain in effect
16 until the hearing is completed and the director has made a final
17 determination on the merits. However, the order of immediate
18 exclusion shall be deemed vacated if the director fails to make a
19 final determination on the merits within 60 days after the original
20 hearing has been completed.

21 (d) An excluded person who files a written appeal with the
22 department pursuant to this section shall, as part of the written
23 request, provide his or her current mailing address. The excluded
24 person shall subsequently notify the department in writing of any
25 change in mailing address, until the hearing process has been
26 completed or terminated.

27 (e) Hearings held pursuant to this section shall be conducted in
28 accordance with Chapter 5 (commencing with Section 11500) of
29 Division 3 of Title 2 of the Government Code. The standard of
30 proof shall be the preponderance of the evidence and the burden
31 of proof shall be on the department.

32 (f) The department may institute or continue a disciplinary
33 proceeding against a member of the board of directors, an executive
34 director, or an officer of a licensee or an employee, prospective
35 employee, or person who is not a client upon any ground provided
36 by this section. The department may enter an order prohibiting
37 any person from being a member of the board of directors, an
38 executive director, or an officer of a licensee or prohibiting the
39 excluded person's employment or presence in the facility or
40 certified family home, or otherwise take disciplinary action against

1 the excluded person, notwithstanding any resignation, withdrawal
2 of employment application, or change of duties by the excluded
3 person, or any discharge, failure to hire, or reassignment of the
4 excluded person by the licensee or that the excluded person no
5 longer has contact with clients at the facility or certified family
6 home.

7 (g) A licensee's or certified family home's failure to comply
8 with the department's exclusion order after being notified of the
9 order shall be grounds for disciplining the licensee pursuant to
10 Section 1550.

11 (h) (1) (A) In cases where the excluded person appealed the
12 exclusion order, the person shall be prohibited from working in
13 any facility or being licensed to operate any facility licensed by
14 the department or from being a certified foster parent for the
15 remainder of the excluded person's life, unless otherwise ordered
16 by the department.

17 (B) The excluded individual may petition for reinstatement one
18 year after the effective date of the decision and order of the
19 department upholding the exclusion order pursuant to Section
20 11522 of the Government Code. The department shall provide the
21 excluded person with a copy of Section 11522 of the Government
22 Code with the decision and order.

23 (2) (A) In cases where the department informed the excluded
24 person of his or her right to appeal the exclusion order and the
25 excluded person did not appeal the exclusion order, the person
26 shall be prohibited from working in any facility or being licensed
27 to operate any facility licensed by the department or a certified
28 foster parent for the remainder of the excluded person's life, unless
29 otherwise ordered by the department.

30 (B) The excluded individual may petition for reinstatement after
31 one year has elapsed from the date of the notification of the
32 exclusion order pursuant to Section 11522 of the Government
33 Code. The department shall provide the excluded person with a
34 copy of Section 11522 of the Government Code with the exclusion
35 order.

36 (i) Notwithstanding paragraph (2) of subdivision (a) or
37 subdivision (c) of Section 1550, the department shall take
38 reasonable action, including, but not limited to, prohibiting a person
39 from being a member of the board of directors, an executive
40 director, or an officer of a licensee of a licensed facility or certified

1 family home, or denying an application for, or suspending or
2 revoking, a license, special permit, certificate of approval, or
3 administrator certificate, issued under this chapter, or denying a
4 transfer of a license pursuant to paragraph (2) of subdivision (c)
5 of Section 1524, upon a finding of a violation of subdivision (i)
6 of Section 11166 of the Penal Code.

7 ~~SEC. 3.~~

8 *SEC. 4.* Section 11165.7 of the Penal Code is amended to read:
9 11165.7. (a) As used in this article, “mandated reporter” is
10 defined as any of the following:

11 (1) A teacher.

12 (2) An instructional aide.

13 (3) A teacher’s aide or teacher’s assistant employed by a public
14 or private school.

15 (4) A classified employee of a public school.

16 (5) An administrative officer or supervisor of child welfare and
17 attendance, or a certificated pupil personnel employee of a public
18 or private school.

19 (6) An administrator of a public or private day camp.

20 (7) An administrator or employee of a public or private youth
21 center, youth recreation program, or youth organization.

22 (8) An administrator, board member, or employee of a public
23 or private organization whose duties require direct contact and
24 supervision of children, including a foster family agency.

25 (9) An employee of a county office of education or the State
26 Department of Education whose duties bring the employee into
27 contact with children on a regular basis.

28 (10) A licensee, an administrator, or an employee of a licensed
29 community care or child day care facility.

30 (11) A Head Start program teacher.

31 (12) A licensing worker or licensing evaluator employed by a
32 licensing agency, as defined in Section 11165.11.

33 (13) A public assistance worker.

34 (14) An employee of a child care institution, including, but not
35 limited to, foster parents, group home personnel, and personnel of
36 residential care facilities.

37 (15) A social worker, probation officer, or parole officer.

38 (16) An employee of a school district police or security
39 department.

1 (17) A person who is an administrator or presenter of, or a
2 counselor in, a child abuse prevention program in a public or
3 private school.

4 (18) A district attorney investigator, inspector, or local child
5 support agency caseworker, unless the investigator, inspector, or
6 caseworker is working with an attorney appointed pursuant to
7 Section 317 of the Welfare and Institutions Code to represent a
8 minor.

9 (19) A peace officer, as defined in Chapter 4.5 (commencing
10 with Section 830) of Title 3 of Part 2, who is not otherwise
11 described in this section.

12 (20) A firefighter, except for volunteer firefighters.

13 (21) A physician and surgeon, psychiatrist, psychologist, dentist,
14 resident, intern, podiatrist, chiropractor, licensed nurse, dental
15 hygienist, optometrist, marriage and family therapist, clinical social
16 worker, professional clinical counselor, or any other person who
17 is currently licensed under Division 2 (commencing with Section
18 500) of the Business and Professions Code.

19 (22) An emergency medical technician I or II, paramedic, or
20 other person certified pursuant to Division 2.5 (commencing with
21 Section 1797) of the Health and Safety Code.

22 (23) A psychological assistant registered pursuant to Section
23 2913 of the Business and Professions Code.

24 (24) A marriage and family therapist trainee, as defined in
25 subdivision (c) of Section 4980.03 of the Business and Professions
26 Code.

27 (25) An unlicensed marriage and family therapist intern
28 registered under Section 4980.44 of the Business and Professions
29 Code.

30 (26) A state or county public health employee who treats a minor
31 for venereal disease or any other condition.

32 (27) A coroner.

33 (28) A medical examiner or other person who performs
34 autopsies.

35 (29) A commercial film and photographic print or image
36 processor as specified in subdivision (e) of Section 11166. As used
37 in this article, "commercial film and photographic print or image
38 processor" means a person who develops exposed photographic
39 film into negatives, slides, or prints, or who makes prints from
40 negatives or slides, or who prepares, publishes, produces, develops,

1 duplicates, or prints any representation of information, data, or an
2 image, including, but not limited to, any film, filmstrip, photograph,
3 negative, slide, photocopy, videotape, video laser disc, computer
4 hardware, computer software, computer floppy disk, data storage
5 medium, CD-ROM, computer-generated equipment, or
6 computer-generated image, for compensation. The term includes
7 any employee of that person; it does not include a person who
8 develops film or makes prints or images for a public agency.

9 (30) A child visitation monitor. As used in this article, “child
10 visitation monitor” means a person who, for financial
11 compensation, acts as a monitor of a visit between a child and
12 another person when the monitoring of that visit has been ordered
13 by a court of law.

14 (31) An animal control officer or humane society officer. For
15 the purposes of this article, the following terms have the following
16 meanings:

17 (A) “Animal control officer” means a person employed by a
18 city, county, or city and county for the purpose of enforcing animal
19 control laws or regulations.

20 (B) “Humane society officer” means a person appointed or
21 employed by a public or private entity as a humane officer who is
22 qualified pursuant to Section 14502 or 14503 of the Corporations
23 Code.

24 (32) A clergy member, as specified in subdivision (d) of Section
25 11166. As used in this article, “clergy member” means a priest,
26 minister, rabbi, religious practitioner, or similar functionary of a
27 church, temple, or recognized denomination or organization.

28 (33) Any custodian of records of a clergy member, as specified
29 in this section and subdivision (d) of Section 11166.

30 (34) An employee of any police department, county sheriff’s
31 department, county probation department, or county welfare
32 department.

33 (35) An employee or volunteer of a Court Appointed Special
34 Advocate program, as defined in Rule 5.655 of the California Rules
35 of Court.

36 (36) A custodial officer, as defined in Section 831.5.

37 (37) A person providing services to a minor child under Section
38 12300 or 12300.1 of the Welfare and Institutions Code.

39 (38) An alcohol and drug counselor. As used in this article, an
40 “alcohol and drug counselor” is a person providing counseling,

1 therapy, or other clinical services for a state licensed or certified
2 drug, alcohol, or drug and alcohol treatment program. However,
3 alcohol or drug abuse, or both alcohol and drug abuse, is not, in
4 and of itself, a sufficient basis for reporting child abuse or neglect.

5 (39) A clinical counselor trainee, as defined in subdivision (g)
6 of Section 4999.12 of the Business and Professions Code.

7 (40) A clinical counselor intern registered under Section 4999.42
8 of the Business and Professions Code.

9 (41) An employee or administrator of a public or private
10 postsecondary educational institution, whose duties bring the
11 administrator or employee into contact with children on a regular
12 basis, or who supervises those whose duties bring the administrator
13 or employee into contact with children on a regular basis, as to
14 child abuse or neglect occurring on that institution's premises or
15 at an official activity of, or program conducted by, the institution.
16 Nothing in this paragraph shall be construed as altering the
17 lawyer-client privilege as set forth in Article 3 (commencing with
18 Section 950) of Chapter 4 of Division 8 of the Evidence Code.

19 (42) An athletic coach, athletic administrator, or athletic director
20 employed by any public or private school that provides any
21 combination of instruction for kindergarten, or grades 1 to 12,
22 inclusive.

23 (43) (A) A commercial computer technician as specified in
24 subdivision (e) of Section 11166. As used in this article,
25 "commercial computer technician" means a person who works for
26 a company that is in the business of repairing, installing, or
27 otherwise servicing a computer or computer component, including,
28 but not limited to, a computer part, device, memory storage or
29 recording mechanism, auxiliary storage recording or memory
30 capacity, or any other material relating to the operation and
31 maintenance of a computer or computer network system, for a fee.
32 An employer who provides an electronic communications service
33 or a remote computing service to the public shall be deemed to
34 comply with this article if that employer complies with Section
35 2258A of Title 18 of the United States Code.

36 (B) An employer of a commercial computer technician may
37 implement internal procedures for facilitating reporting consistent
38 with this article. These procedures may direct employees who are
39 mandated reporters under this paragraph to report materials
40 described in subdivision (e) of Section 11166 to an employee who

1 is designated by the employer to receive the reports. An employee
2 who is designated to receive reports under this subparagraph shall
3 be a commercial computer technician for purposes of this article.
4 A commercial computer technician who makes a report to the
5 designated employee pursuant to this subparagraph shall be deemed
6 to have complied with the requirements of this article and shall be
7 subject to the protections afforded to mandated reporters, including,
8 but not limited to, those protections afforded by Section 11172.

9 (44) Any athletic coach, including, but not limited to, an
10 assistant coach or a graduate assistant involved in coaching, at
11 public or private postsecondary educational institutions.

12 (b) Except as provided in paragraph (35) of subdivision (a),
13 volunteers of public or private organizations whose duties require
14 direct contact with and supervision of children are not mandated
15 reporters but are encouraged to obtain training in the identification
16 and reporting of child abuse and neglect and are further encouraged
17 to report known or suspected instances of child abuse or neglect
18 to an agency specified in Section 11165.9.

19 (c) Except as provided in subdivision (d), employers are strongly
20 encouraged to provide their employees who are mandated reporters
21 with training in the duties imposed by this article. This training
22 shall include training in child abuse and neglect identification and
23 training in child abuse and neglect reporting. Whether or not
24 employers provide their employees with training in child abuse
25 and neglect identification and reporting, the employers shall
26 provide their employees who are mandated reporters with the
27 statement required pursuant to subdivision (a) of Section 11166.5.

28 (d) Pursuant to Section 44691 of the Education Code, school
29 districts, county offices of education, state special schools and
30 diagnostic centers operated by the State Department of Education,
31 and charter schools shall annually train their employees and persons
32 working on their behalf specified in subdivision (a) in the duties
33 of mandated reporters under the child abuse reporting laws. The
34 training shall include, but not necessarily be limited to, training in
35 child abuse and neglect identification and child abuse and neglect
36 reporting.

37 (e) (1) On and after January 1, 2018, pursuant to Section
38 1596.8662 of the Health and Safety Code, a child care licensee
39 applicant shall take training in the duties of mandated reporters
40 under the child abuse reporting laws as a condition of licensure,

1 and a child care administrator or an employee of a licensed child
2 day care facility shall take training in the duties of mandated
3 reporters during the first 90 days when he or she is employed by
4 the facility.

5 (2) A person specified in paragraph (1) who becomes a licensee,
6 administrator, or employee of a licensed child day care facility
7 shall take renewal mandated reporter training every two years
8 following the date on which he or she completed the initial
9 mandated reporter training. The training shall include, but not
10 necessarily be limited to, training in child abuse and neglect
11 identification and child abuse and neglect reporting.

12 (f) Unless otherwise specifically provided, the absence of
13 training shall not excuse a mandated reporter from the duties
14 imposed by this article.

15 (g) Public and private organizations are encouraged to provide
16 their volunteers whose duties require direct contact with and
17 supervision of children with training in the identification and
18 reporting of child abuse and neglect.

19 ~~SEC. 4.~~

20 *SEC. 5.* Section 11166 of the Penal Code is amended to read:

21 11166. (a) Except as provided in subdivision (d), and in
22 Section 11166.05, a mandated reporter shall make a report to an
23 agency specified in Section 11165.9 whenever the mandated
24 reporter, in his or her professional capacity or within the scope of
25 his or her employment, has knowledge of or observes a child whom
26 the mandated reporter knows or reasonably suspects has been the
27 victim of child abuse or neglect. The mandated reporter shall make
28 an initial report by telephone to the agency immediately or as soon
29 as is practicably possible, and shall prepare and send, fax, or
30 electronically transmit a written followup report within 36 hours
31 of receiving the information concerning the incident. The mandated
32 reporter may include with the report any nonprivileged
33 documentary evidence the mandated reporter possesses relating
34 to the incident.

35 (1) For purposes of this article, “reasonable suspicion” means
36 that it is objectively reasonable for a person to entertain a suspicion,
37 based upon facts that could cause a reasonable person in a like
38 position, drawing, when appropriate, on his or her training and
39 experience, to suspect child abuse or neglect. “Reasonable
40 suspicion” does not require certainty that child abuse or neglect

1 has occurred nor does it require a specific medical indication of
2 child abuse or neglect; any “reasonable suspicion” is sufficient.
3 For purposes of this article, the pregnancy of a minor does not, in
4 and of itself, constitute a basis for a reasonable suspicion of sexual
5 abuse.

6 (2) The agency shall be notified and a report shall be prepared
7 and sent, faxed, or electronically transmitted even if the child has
8 expired, regardless of whether or not the possible abuse was a
9 factor contributing to the death, and even if suspected child abuse
10 was discovered during an autopsy.

11 (3) A report made by a mandated reporter pursuant to this
12 section shall be known as a mandated report.

13 (b) If, after reasonable efforts, a mandated reporter is unable to
14 submit an initial report by telephone, he or she shall immediately
15 or as soon as is practicably possible, by fax or electronic
16 transmission, make a one-time automated written report on the
17 form prescribed by the Department of Justice, and shall also be
18 available to respond to a telephone followup call by the agency
19 with which he or she filed the report. A mandated reporter who
20 files a one-time automated written report because he or she was
21 unable to submit an initial report by telephone is not required to
22 submit a written followup report.

23 (1) The one-time automated written report form prescribed by
24 the Department of Justice shall be clearly identifiable so that it is
25 not mistaken for a standard written followup report. In addition,
26 the automated one-time report shall contain a section that allows
27 the mandated reporter to state the reason the initial telephone call
28 was not able to be completed. The reason for the submission of
29 the one-time automated written report in lieu of the procedure
30 prescribed in subdivision (a) shall be captured in the Child Welfare
31 Services/Case Management System (CWS/CMS). The department
32 shall work with stakeholders to modify reporting forms and the
33 CWS/CMS as is necessary to accommodate the changes enacted
34 by these provisions.

35 (2) This subdivision shall not become operative until the
36 CWS/CMS is updated to capture the information prescribed in this
37 subdivision.

38 (3) This subdivision shall become inoperative three years after
39 this subdivision becomes operative or on January 1, 2009,
40 whichever occurs first.

1 (4) On the inoperative date of these provisions, a report shall
2 be submitted to the counties and the Legislature by the State
3 Department of Social Services that reflects the data collected from
4 automated one-time reports indicating the reasons stated as to why
5 the automated one-time report was filed in lieu of the initial
6 telephone report.

7 (5) Nothing in this section shall supersede the requirement that
8 a mandated reporter first attempt to make a report via telephone,
9 or that agencies specified in Section 11165.9 accept reports from
10 mandated reporters and other persons as required.

11 (c) A mandated reporter who fails to report an incident of known
12 or reasonably suspected child abuse or neglect as required by this
13 section is guilty of a misdemeanor punishable by up to six months
14 confinement in a county jail or by a fine of one thousand dollars
15 (\$1,000) or by both that imprisonment and fine. If a mandated
16 reporter intentionally conceals his or her failure to report an
17 incident known by the mandated reporter to be abuse or severe
18 neglect under this section, the failure to report is a continuing
19 offense until an agency specified in Section 11165.9 discovers the
20 offense.

21 (d) (1) A clergy member who acquires knowledge or a
22 reasonable suspicion of child abuse or neglect during a penitential
23 communication is not subject to subdivision (a). For the purposes
24 of this subdivision, "penitential communication" means a
25 communication, intended to be in confidence, including, but not
26 limited to, a sacramental confession, made to a clergy member
27 who, in the course of the discipline or practice of his or her church,
28 denomination, or organization, is authorized or accustomed to hear
29 those communications, and under the discipline, tenets, customs,
30 or practices of his or her church, denomination, or organization,
31 has a duty to keep those communications secret.

32 (2) Nothing in this subdivision shall be construed to modify or
33 limit a clergy member's duty to report known or suspected child
34 abuse or neglect when the clergy member is acting in some other
35 capacity that would otherwise make the clergy member a mandated
36 reporter.

37 (3) (A) On or before January 1, 2004, a clergy member or any
38 custodian of records for the clergy member may report to an agency
39 specified in Section 11165.9 that the clergy member or any
40 custodian of records for the clergy member, prior to January 1,

1 1997, in his or her professional capacity or within the scope of his
2 or her employment, other than during a penitential communication,
3 acquired knowledge or had a reasonable suspicion that a child had
4 been the victim of sexual abuse and that the clergy member or any
5 custodian of records for the clergy member did not previously
6 report the abuse to an agency specified in Section 11165.9. The
7 provisions of Section 11172 shall apply to all reports made pursuant
8 to this paragraph.

9 (B) This paragraph shall apply even if the victim of the known
10 or suspected abuse has reached the age of majority by the time the
11 required report is made.

12 (C) The local law enforcement agency shall have jurisdiction
13 to investigate any report of child abuse made pursuant to this
14 paragraph even if the report is made after the victim has reached
15 the age of majority.

16 (e) (1) A commercial film, photographic print, or image
17 processor who has knowledge of or observes, within the scope of
18 his or her professional capacity or employment, any film,
19 photograph, videotape, negative, slide, or any representation of
20 information, data, or an image, including, but not limited to, any
21 film, filmstrip, photograph, negative, slide, photocopy, videotape,
22 video laser disc, computer hardware, computer software, computer
23 floppy disk, data storage medium, CD-ROM, computer-generated
24 equipment, or computer-generated image depicting a child under
25 16 years of age engaged in an act of sexual conduct, shall,
26 immediately or as soon as practicably possible, telephonically
27 report the instance of suspected abuse to the law enforcement
28 agency located in the county in which the images are seen. Within
29 36 hours of receiving the information concerning the incident, the
30 reporter shall prepare and send, fax, or electronically transmit a
31 written followup report of the incident with a copy of the image
32 or material attached.

33 (2) A commercial computer technician who has knowledge of
34 or observes, within the scope of his or her professional capacity
35 or employment, any representation of information, data, or an
36 image, including, but not limited to, any computer hardware,
37 computer software, computer file, computer floppy disk, data
38 storage medium, CD-ROM, computer-generated equipment, or
39 computer-generated image that is retrievable in perceivable form
40 and that is intentionally saved, transmitted, or organized on an

1 electronic medium, depicting a child under 16 years of age engaged
2 in an act of sexual conduct, shall immediately, or as soon as
3 practicably possible, telephonically report the instance of suspected
4 abuse to the law enforcement agency located in the county in which
5 the images or materials are seen. As soon as practicably possible
6 after receiving the information concerning the incident, the reporter
7 shall prepare and send, fax, or electronically transmit a written
8 followup report of the incident with a brief description of the
9 images or materials.

10 (3) For purposes of this article, “commercial computer
11 technician” includes an employee designated by an employer to
12 receive reports pursuant to an established reporting process
13 authorized by subparagraph (B) of paragraph (43) of subdivision
14 (a) of Section 11165.7.

15 (4) As used in this subdivision, “electronic medium” includes,
16 but is not limited to, a recording, CD-ROM, magnetic disk memory,
17 magnetic tape memory, CD, DVD, thumbdrive, or any other
18 computer hardware or media.

19 (5) As used in this subdivision, “sexual conduct” means any of
20 the following:

21 (A) Sexual intercourse, including genital-genital, oral-genital,
22 anal-genital, or oral-anal, whether between persons of the same or
23 opposite sex or between humans and animals.

24 (B) Penetration of the vagina or rectum by any object.

25 (C) Masturbation for the purpose of sexual stimulation of the
26 viewer.

27 (D) Sadoomasochistic abuse for the purpose of sexual stimulation
28 of the viewer.

29 (E) Exhibition of the genitals, pubic, or rectal areas of a person
30 for the purpose of sexual stimulation of the viewer.

31 (f) Any mandated reporter who knows or reasonably suspects
32 that the home or institution in which a child resides is unsuitable
33 for the child because of abuse or neglect of the child shall bring
34 the condition to the attention of the agency to which, and at the
35 same time as, he or she makes a report of the abuse or neglect
36 pursuant to subdivision (a).

37 (g) Any other person who has knowledge of or observes a child
38 whom he or she knows or reasonably suspects has been a victim
39 of child abuse or neglect may report the known or suspected
40 instance of child abuse or neglect to an agency specified in Section

1 11165.9. For purposes of this section, “any other person” includes
2 a mandated reporter who acts in his or her private capacity and
3 not in his or her professional capacity or within the scope of his
4 or her employment.

5 (h) When two or more persons, who are required to report,
6 jointly have knowledge of a known or suspected instance of child
7 abuse or neglect, and when there is agreement among them, the
8 telephone report may be made by a member of the team selected
9 by mutual agreement and a single report may be made and signed
10 by the selected member of the reporting team. Any member who
11 has knowledge that the member designated to report has failed to
12 do so shall thereafter make the report.

13 (i) (1) The reporting duties under this section are individual,
14 and no supervisor or administrator may impede or inhibit the
15 reporting duties, and no person making a report shall be subject
16 to any sanction for making the report. However, internal procedures
17 to facilitate reporting and apprise supervisors and administrators
18 of reports may be established provided that they are not inconsistent
19 with this article. An internal policy shall not direct an employee
20 to allow his or her supervisor to file or process a mandated report
21 under any circumstances.

22 (2) The internal procedures shall not require any employee
23 required to make reports pursuant to this article to disclose his or
24 her identity to the employer.

25 (3) Reporting the information regarding a case of possible child
26 abuse or neglect to an employer, supervisor, school principal,
27 school counselor, coworker, or other person shall not be a substitute
28 for making a mandated report to an agency specified in Section
29 11165.9.

30 (j) (1) A county probation or welfare department shall
31 immediately, or as soon as practicably possible, report by
32 telephone, fax, or electronic transmission to the law enforcement
33 agency having jurisdiction over the case, to the agency given the
34 responsibility for investigation of cases under Section 300 of the
35 Welfare and Institutions Code, and to the district attorney’s office
36 every known or suspected instance of child abuse or neglect, as
37 defined in Section 11165.6, except acts or omissions coming within
38 subdivision (b) of Section 11165.2, or reports made pursuant to
39 Section 11165.13 based on risk to a child that relates solely to the
40 inability of the parent to provide the child with regular care due

1 to the parent's substance abuse, which shall be reported only to
2 the county welfare or probation department. A county probation
3 or welfare department also shall send, fax, or electronically transmit
4 a written report thereof within 36 hours of receiving the information
5 concerning the incident to any agency to which it makes a
6 telephone report under this subdivision.

7 (2) A county probation or welfare department shall immediately,
8 and in no case in more than 24 hours, report to the law enforcement
9 agency having jurisdiction over the case after receiving information
10 that a child or youth who is receiving child welfare services has
11 been identified as the victim of commercial sexual exploitation,
12 as defined in subdivision (d) of Section 11165.1.

13 (3) When a child or youth who is receiving child welfare
14 services and who is reasonably believed to be the victim of, or is
15 at risk of being the victim of, commercial sexual exploitation, as
16 defined in Section 11165.1, is missing or has been abducted, the
17 county probation or welfare department shall immediately, or in
18 no case later than 24 hours from receipt of the information, report
19 the incident to the appropriate law enforcement authority for entry
20 into the National Crime Information Center database of the Federal
21 Bureau of Investigation and to the National Center for Missing
22 and Exploited Children.

23 (k) A law enforcement agency shall immediately, or as soon as
24 practicably possible, report by telephone, fax, or electronic
25 transmission to the agency given responsibility for investigation
26 of cases under Section 300 of the Welfare and Institutions Code
27 and to the district attorney's office every known or suspected
28 instance of child abuse or neglect reported to it, except acts or
29 omissions coming within subdivision (b) of Section 11165.2, which
30 shall be reported only to the county welfare or probation
31 department. A law enforcement agency shall report to the county
32 welfare or probation department every known or suspected instance
33 of child abuse or neglect reported to it which is alleged to have
34 occurred as a result of the action of a person responsible for the
35 child's welfare, or as the result of the failure of a person responsible
36 for the child's welfare to adequately protect the minor from abuse
37 when the person responsible for the child's welfare knew or
38 reasonably should have known that the minor was in danger of
39 abuse. A law enforcement agency also shall send, fax, or
40 electronically transmit a written report thereof within 36 hours of

1 receiving the information concerning the incident to any agency
2 to which it makes a telephone report under this subdivision.

3 ~~SEC. 5. Section 10605.5 of the Welfare and Institutions Code~~
4 ~~is amended to read:~~

5 ~~10605.5. (a) (1) The department, in consultation with counties~~
6 ~~and labor organizations, shall establish, no later than January 1,~~
7 ~~2016, a process to receive voluntary disclosures from social~~
8 ~~workers, if a social worker has reasonable cause to believe that a~~
9 ~~policy, procedure, or practice, related to the provision of child~~
10 ~~welfare services by a county child welfare agency, meets any of~~
11 ~~the following conditions:~~

12 ~~(A) Endangers the health or well-being of a child or children.~~

13 ~~(B) Is contrary to existing statute or regulation.~~

14 ~~(C) Is contrary to public policy.~~

15 ~~(2) Notwithstanding any other law, the department shall not~~
16 ~~disclose to any person or entity the identity of a social worker~~
17 ~~making a disclosure described in paragraph (1), unless (A) the~~
18 ~~social worker has consented to the disclosure or (B) there is an~~
19 ~~immediate risk to the health and safety of a child.~~

20 ~~(b) The department shall make available a description of the~~
21 ~~process established pursuant to subdivision (a) to counties and~~
22 ~~labor organizations.~~

23 ~~(c) For purposes of this section, "county child welfare agency"~~
24 ~~includes a county welfare department, child welfare department,~~
25 ~~and any other county agency that employs social workers and is~~
26 ~~responsible for the placement and supervision of children and~~
27 ~~youth in foster care, including department social workers contracted~~
28 ~~by counties to perform direct adoption services.~~

29 ~~(d) (1) No later than January 1, 2018, the department shall~~
30 ~~report to the Legislature only the following information:~~

31 ~~(A) The total number of relevant disclosures received from~~
32 ~~social workers, including the month and year the disclosure was~~
33 ~~received.~~

34 ~~(B) A summary description of both of the following:~~

35 ~~(i) The issues raised in the disclosures received from a social~~
36 ~~worker.~~

37 ~~(ii) The actions taken by the department in response to the~~
38 ~~disclosures.~~

39 ~~(2) No later than January 1, 2018, the department shall post on~~
40 ~~its Internet Web site the information described in paragraph (1).~~

1 ~~(3) The report required pursuant to paragraph (1) shall be~~
2 ~~submitted in compliance with Section 9795 of the Government~~
3 ~~Code.~~

4 ~~(e) (1) Effective January 1, 2018, all of the duties imposed on~~
5 ~~the department pursuant to subdivisions (a) and (b) shall apply~~
6 ~~with respect to the receipt of voluntary disclosures from social~~
7 ~~workers employed at a foster family agency, as defined in Section~~
8 ~~1502 of the Health and Safety Code, including, but not limited to,~~
9 ~~disclosures from social workers who have reasonable cause to~~
10 ~~believe that a policy, procedure, or practice violates paragraph (1)~~
11 ~~or (2) of subdivision (i) of Section 11166 of the Penal Code.~~

12 ~~(2) No later than July 1, 2019, the department shall report to~~
13 ~~the Legislature only the following information:~~

14 ~~(A) The total number of relevant disclosures received from~~
15 ~~social workers employed at foster family agencies, including the~~
16 ~~month and year the disclosure was received.~~

17 ~~(B) A summary description of both of the following:~~

18 ~~(i) The issues raised in the disclosures received from a social~~
19 ~~worker.~~

20 ~~(ii) The actions taken by the department in response to the~~
21 ~~disclosures.~~

22 ~~(3) No later than July 1, 2019, the department shall post on its~~
23 ~~Internet Web site the information described in paragraph (1).~~

24 ~~(4) The report required pursuant to paragraph (2) shall be~~
25 ~~submitted in compliance with Section 9795 of the Government~~
26 ~~Code.~~

27 SEC. 6. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.